UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

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ERIC W. PAYNE,

Plaintiff,

v. Civil Action No.:

DISTRICT OF COLUMBIA, et al., 10-cv-00679

Defendants.

- - - - - - - - - - - - - - - x Tuesday, February 21, 2012

Washington, D.C.

Volume II

Continued videotaped deposition of

DR. NATWAR M. GANDHI,

the witness, called for examination by counsel for the plaintiff, pursuant to notice, held in the Temple Law Offices, 1229 15th Street, N.W., Washington, D.C., beginning at 9:57 a.m., before Kelly Susnowitz, a Notary Public in and for the District of Columbia, when were present on behalf of the respective parties:

A P P E A R A N C E S

For the Plaintiff:

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ALSO PRESENT:

Eric W. Payne, Plaintiff
Kim Johnson, Videographer

C O N T E N T S

Examination by Counsel

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(Attached.)

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P R O C E E D I N G S

THE VIDEOGRAPHER: Here begins tape one in the videotaped deposition of Dr. Natwar Gandhi, taken in the matter of Eric Payne v. District of Columbia in the U.S. District Court for the District of Columbia. Case Number 10-CV-00679. Today's date is February 21st, 2012. The time is 9:57. This deposition is being held at 1229 15th Street, N.W., Washington, D.C. The court reporter is Kelly Susnowitz. The video camera operator is Kim Johnson, both are on behalf of Precise Reporting. Would counsel please introduce yourselves and state whom you represent.

MR. TEMPLE: Good morning. Donald Temple for plaintiff, Eric Payne.

MS. EFROS: Good morning. Ellen Efros for the defendant, District of Columbia and for Dr. Gandhi.

THE VIDEOAGRAPHER: Would the court reporter please swear in the witness.

S T I P U L A T I O N S

It is hereby stipulated and agreed by and

between counsel present at this videotaped deposition and by the deponent that the reading and signing of this deposition is not waived.

Thereupon

DR. NATWAR M. GANDHI,

the witness, called for examination by counsel for the plaintiff, and after having been first duly sworn by the Notary Public, was examined and testified as follows: I do.

THE VIDEOGRAPHER: You may proceed.

EXAMINATION BY COUNSEL FOR THE PLAINTIFF

BY MR. TEMPLE:

Q. Good morning, Dr. Gandhi.

A. Good morning.

Q. Dr. Gandhi, could you tell me, please, what a talking point memorandum is, please?

A. I'm sorry?

Q. What is a talking point memorandum?

A. Basically, to help me recapture a salient point of a discussion.

Q. What is usually requested by you?

A. Any time I'm meeting with people in other parts of the government, as well as other people with whom I'm meeting.

Q. So it's a briefing summary of sorts?

A. Roughly.

Q. All right. Since we last met, has there been a search of your personal e-mails?

A. Yes.

Q. And did you oversee that search of your e-mails?

A. No.

Q. Who conducted the search?

A. My assistant.

Q. And who is your assistant?

A. Lynette Jones.

Q. And who instructed her?

A. Working with our lawyers.

Q. Were there search terms that she used?

A. I don't know.

Q. What lawyers did she work with?

A. David Tseng of General Counsel.

Q. And do you know -- he actually supervised the search?

A. I don't know that.

Q. Was anybody else involved in the search?

A. I don't know that.

Q. Do you know when it was conducted?

A. After our last meeting, last deposition, I don't know the precise timing.

Q. Do you know how long she actually conducted that search?

A. No, I don't.

Q. Did you participate, at all, in that search?

A. No, except to give my passwords.

Q. Do you know who communicated with David Tseng as to the search contact?

A. No.

Q. Now, do you know whether there were any e-mails sent or received by you, to or from -- let me ask it a different way. Were there any e-mails sent to you by an elected official between

March 1st, 2008 and June 30, 2008, regarding any subject matter, on your private e-mails?

A. I don't recollect any, but I cannot be sure.

Q. Do you know if you sent any e-mails to any elected officials --

A. Again --

Q. -- during that same time period?

A. Okay. I don't recollect any, but there might be some, I don't know.

Q. To the extent that you communicated with Lorraine Green electronically, what would have been the substance of those communications?

A. From my private e-mail?

Q. Yes.

A. I don't recollect any e-mail that I sent Lorraine Green, but I cannot be sure.

Q. According to your calendar, you met with Lorraine Green on a number of occasions, beginning in March 2008, March 19th, what was the purpose of that meeting?

A. I usually get together with her to talk about larger issues of City politics.

Q. And you met with her again on May the first, 2008, and what was purpose of that meeting?

A. Again, you know, a variety of City politic's issues.

Q. And when you say City politic's issues, what does that include?

A. Elections, you know, general issues, you know, governance.

Q. Why would you meet with her to talk about governance issues?

A. Because she's quite well-versed in the City politics.

Q. And when did you first meet her?

A. I don't recall that.

Q. You met with her again on August the 15th, 2008. What was the purpose of that meeting?

A. Again, I cannot recollect specifically, but it's general issues of City politics.

Q. And that would be the same on August the

19th, 2008?

A. Right.

Q. And when you say, City politics, to what extent did that include the D.C. lottery?

A. Only that, one, that we have had a lottery contract, because it's important for the City's revenue stream and that our RFP lottery contract is available and open to all.

Q. Did you know at the point that you met with her, any of those meetings, between March and August, that Lorraine Green was interested in bidding on the lottery contract?

A. Not at that time.

Q. Did you subsequently learn that?

A. I'm sorry?

Q. Did you subsequently learn that?

A. Yes.

Q. Did you have any discussions with her about her interest in bidding on the lottery contract during any of those meetings?

A. Only to the extent that the RFP is open

and available to all.

Q. So she did in fact inquire of you about the lottery contract during one or more of those meetings?

A. Only to the extent that RFP is open and available to all.

Q. Do you recall what she asked you?

A. No.

Q. Now, directing your attention to May 15th, 2008, you met with Paul Lundquist and Angell on that afternoon.

(Mr. Payne walked into the deposition room.)

A. I don't recall that meeting.

Q. To the extent that there's an e-mail from you requesting -- dated May 15th, 2008, requesting a meeting with Angell, Lucille and Paul, on procurement and personnel that afternoon, would that refresh your recollection?

A. No.

MR. TEMPLE: We'll take a break.

THE VIDEOGRAPHER: We're off the record at 10:05.

(Brief recess.)

THE VIDEOGRAPHER: We're back on the record at 10:06.

(Deposition Exhibit No. 1 was marked for identification.)

BY MR. TEMPLE:

Q. I'm going to show you what is marked as Plaintiff's Exhibit 1. And directing your attention to the e-mail, from you, dated May 15th, at 1:30 p.m., to Angell Jacobs, Lucille Dickinson and Paul Lundquist. Take a minute to read it and just look up when you're finished please. Do you recall sending that e-mail in the afternoon of May 15th, 2008?

A. No, I don't.

Q. Do you know why you would have a need to speak with them regarding a matter of, quote unquote, of high importance on that afternoon?

A. I don't at this moment. I don't recall

that.

Q. Were there any personnel issues, as referenced in this e-mail, that come to mind?

A. No.

Q. Procurement issues?

A. I don't recall.

Q. Do you recall earlier that day having a meeting with Mr. Vincent Gray?

A. I don't recall the meeting.

(Deposition Exhibit No. 2 was marked for identification.)

By MR. TEMPLE:

Q. I'm showing you what is marked as Exhibit 2. Take a minute to read it. Do you recognize this document?

A. Yes.

Q. And was this audit actually conducted?

A. I don't know.

Q. Did you hear back from Mr. Willoughby regarding this audit?

A. I recall that there was some kind of a

report from Inspector General, but at this stage, I don't know what the contents of the report were.

Q. For the record, this a letter to you, from Mr. Charles Willoughby dated June 24th, 2008, informing you of its plan to conduct -- the IGs plan to conduct an audit of the contracting and procurement operation of the CFO and you don't know, as we speak, whether this audit was actually concluded?

A. Right.

Q. Have you seen any type of audit report, draft or otherwise, from Mr. Willoughby, consistent with this?

A. I don't recall any of the report from IG.

Q. You're familiar with the Office of Integrity and Oversight Investigation?

A. Yes.

Q. Now, previously when I asked you whether you recall a meeting with Mr. Graham, you said you didn't have a recollection of any?

A. With whom?

Q. Mr. Graham.

A. Uh-huh.

Q. In fact, have you read the OIO investigative report?

A. Now I have.

Q. When did you first read it?

A. I would say last week or a week before. I don't know exactly when.

Q. That report was released in 2004?

A. Uh-huh.

Q. Are you aware of that?

A. From reading, yes.

Q. Is there some reason you -- I'm sorry, 2008. Is there some reason you would have not read that report in 2008?

A. Reading from now is that -- what I gather that, they have exonerated the employee involved in it and, since there are no adverse CFO implications, so there was no need for an issue to be raised at my level.

Q. You took some -- you took some interest in

Mr. Graham's concerns about Mr. Payne early in June 2004; is that correct?

A. How do you mean by that?

Q. You met with Mr. Graham on or about June --

A. I believe --

Q. Let me finish the question. You met with Mr. Graham on about June 4th, 2008; is that correct?

A. I don't recall -- recollect or recall the meeting, but I do recall a conversation that could have been on the telephone.

Q. According to your calendar, you were scheduled to meet with him for lunch at 12:30 on June 4, 2008; is that accurate?

A. If it is on the calendar.

Q. And you don't recall whether that lunch meeting actually occurred?

A. I recall a conversation. Whether it was meeting or telephone, I don't recall now.

Q. And you also recall having a conversation

with David Tseng after the conversation with Jim Graham regarding Mr. Graham's concerns about Eric Payne; isn't that correct?

A. It was more -- yes, right.

Q. And you relayed to Mr. Tseng, Mr. Graham's specific concerns about Mr. Payne; is that correct?

A. That, I don't recall.

Q. You were aware, though, that Mr. Tseng was going to be following up with Mr. Graham's staff to schedule a meeting to discuss what he discussed with you on June the 4th?

A. Yes.

Q. And you were aware that Mr. Tseng was going to facilitate Mr. Graham's communications with Mr. Andary regarding his concerns; is that accurate?

A. Yes.

Q. And I want to go back to your communication with Mr. Graham. What did Mr. Graham tell you on June the 4th, when you had

this communication with him, about Mr. Payne?

A. If I recollect correctly, I think his concern was about Mr. Williams, the LSDB contractor and that he had some concern about that particular contractor.

Q. What did he tell you those concerns were?

A. That he had run some nightclub in his ward and would not be a worthwhile LSDB contractor.

Q. And did he tell you that he wanted to initiate an investigation with OIO in that regard?

A. That, I don't know. I don't recollect that conversation.

Q. To what extent that -- to the extent that he ran a nightclub in his ward, how would that affect the award of the lottery contract to Mr. Williams?

A. He did not elaborate on that and, as I said, I don't recall that.

Q. And is it your testimony today that at no time in that conversation with Mr. Graham on June the 4th did he mention the name of Eric Payne?

A. No. It was more in terms of that -- Williams, he had some questions about.

Q. Did he tell you that he wanted to file a complaint at that time in the Office of OIO?

A. No.

Q. Why did Mr. Tseng take Mr. Andary to his meeting with Mr. Graham on June the 26th?

A. My assumption --

MS. EFROS: Don't assume.

A. I'm sorry, I really don't know. I really don't know.

Q. Did Mr. Graham mention OIO when he talked to you on the fourth?

A. No, not that I recall.

Q. So it was your initiation to involve OIO in the Graham matter?

MS. EFROS: Objection.

Q. You can answer the question.

A. Generally, when a charge is made against any one of our employees, we ask OIO to investigate.

Q. In this particular situation, you've stated, for the record, that the charge was not being made against Mr. Payne and Mr. Williams is not an OCFO employee, so why then would OIO become involved?

A. Well, the question was here that it's an OCFO contract and that, since it's an OCFO contract, we need to investigate that.

Q. Again, the underlying question is then, that you actually initiated the OIO investigation relative to Graham's concerns about Mr. Williams?

MS. EFROS: Objection.

A. About the OCFO contract.

Q. Which were related to, according to Mr. Graham, to Mr. Williams?

A. Correct.

Q. And then, when you talked to Mr. Tseng about Mr. Graham's communication with you, did you tell him that Mr. Andary should become involved?

MS. EFROS: Objection. And I instruct you not to answer that question.

MR. TEMPLE: On what grounds?

MS. EFROS: On privilege. It's a conversation with his counsel.

MR. TEMPLE: It's not attorney-client privilege. It's not talking about the law. For the record --

MS. EFROS: I don't know what he's talking about.

MR. TEMPLE: For the record --

MS. EFROS: I'm objecting to the question.

MR. TEMPLE: It's noted.

MS. EFROS: You cannot answer the question. Move on.

By MR. TEMPLE:

Q. Why did Andary go to the meeting with Mr. Tseng?

MS. EFROS: If you know.

MR. TEMPLE: Excuse me. You can't tell him, if he knows. That's a speaking objection. He already knows that he can only answer from personal knowledge. That's an inappropriate

objection.

BY MR. TEMPLE:

Q. You can answer the question.

A. So what's the question again?

Q. Why did David -- why did Robert Andary go to the meeting with David Tseng when David Tseng met with Mr. Graham?

MS. EFROS: Objection.

A. What -- so David Tseng represents all of the council relations. So any time there's a council issue, we would ask David Tseng to get involved.

Q. Why didn't you just tell Graham to make the complaint directly to Mr. Andary?

A. Because Andary is part of the CFO. He's not Inspector General and it is we who direct him to do investigation.

Q. Let me get a little clarity on that particular response. You say it is we who direct him. Who is the we that you are referring to?

A. Part of the -- the CFO people.

Q. To that extent, is the OIO Office an independent entity within the CFO Office?

A. No.

Q. So the OIO operates pursuant to your directive?

A. Part of the CFO, yes.

Q. Now, you were aware that Mr. Tseng, Mr. Andary and Mr. Graham met on June 26th; is that correct?

A. I don't exactly know when they met.

Q. And Mr. Tseng reported back to you regarding that meeting; is that correct?

A. I don't recall that.

(Deposition Exhibit No. 3 was marked for identification.)

BY MR. TEMPLE:

Q. I'm showing you what's marked as draft, Report of Investigation, dated August the 4th, 2008, to Ms. Jacobs, through Mr. Tseng, from Mr. Andary.

MS. EFROS: Before you answer any

questions, I want to note, for the record, that this document is marked confidential, subject to court order. So any -- this document and any testimony concerning this document should be transcribed separately and that will be true, I notice Mr. Temple has other documents he might use that are also stamped confidential, subject to court order, and those documents and portions of testimony relating to those documents should also be transcribed separately and noted that those portions are subject to the court order.

By MR. TEMPLE:

Q. You took some time to read that document, Mr. Gandhi?

A. Yes.

Q. And you have not read it before?

A. Not until two weeks ago.

Q. You notice that that document, which is basically -- which is Bated 2045 to 2049, is marked draft?

A. Yes.

Q. Do you know why it was marked draft?

A. No.

Q. Do you know that in the transmittal memo, the word draft is not used by Mr. Andary? He says, the attached report?

A. I'm sorry?

Q. He says the attached report of the investigation, in the first sentence, is being referred to you for your information. It doesn't say the attached draft report on page 2045, Bate, first paragraph, under the caption, subject, Report of Investigation.

A. So I don't understand the question.

Q. Do you note that the word draft is not referenced in Mr. Andary's content where he refers to the attached report of the investigation?

A. Yes, I see that.

Q. Do you know why the word -- do you know who put the term draft on this document?

A. No, I do not.

Q. Do you all have a policy at OCFO to make

documents draft for purposes of avoiding press inquiries?

A. No.

Q. You mention that you did not look at this report until last week, which is 2012 and this is an 2008 report, because the employee was exonerated; is that correct?

A. Yes.

Q. To the extent --

A. That it was not brought to my attention.

Q. I'm sorry?

A. It was not brought to my attention.

Q. The report was not brought to your attention?

A. Right.

Q. Are you telling me that Angell Jacobs did not share this report with you?

A. No.

Q. And the fact of the matter is, you thought the investigation involved Mr. Williams and not Mr. Payne; is that correct?

A. That was my understanding.

Q. After -- so at no point on or around August of 2008, did you learn that Mr. Andary had completed his investigation of Mr. Graham's concern?

A. Right.

Q. How is that possible?

A. I don't know. Usually, if there is an adverse recommendation about an employee, it would be brought to my attention.

Q. To the extent that this was a high level investigation, i.e., an investigation requested by a councilmember, involving a lottery contract that was pending at that particular point in time, why wouldn't it have been an interest to you to monitor the development of the investigation?

MS. EFROS: Objection.

Q. You can answer the question.

A. Well, I'm dealing with many issues and this wasn't brought to my attention.

Q. And it was not an issue that you were

thinking about at any point after you facilitated the investigation?

A. No. No.

Q. And the first time it was brought to your attention between June 2008 was after Mr. Payne filed this lawsuit?

A. Actually, when it became an issue of public attention.

Q. So the first time that it became of concern to you again was after the press began to discuss the investigation?

A. Right.

Q. You're familiar with control order, dash, 3002, regarding contract authority of the OCFO?

A. No.

(Deposition Exhibit No. 4 was marked for identification.)

BY MR. TEMPLE:

Q. I'm showing you a document which is dated July 22nd, 2003, regarding financial administrative issuance and financial management

and control order number 03002?

A. Uh-huh.

Q. Bated 2159 through 2161 and it's issued by you.

A. Uh-huh.

Q. So you've obviously seen the document before?

A. When I look at the front signature, yes.

Q. You do not recall the content of the document?

A. No, I do not.

Q. Do you want to take a minute to review it?

(Dr. Gandhi reviewing the document.)

BY MR. TEMPLE:

Q. Can you tell me what this order does, please?

A. It authorizes our General Counsel to higher external legal help.

Q. And to what extent then would the contracting director, the director of contracts, have any authority to -- to what extent does that

director of contract involved in the award process for legal services contracts?

A. I really don't know. My expectation is that they would work together with the General Counsel.

Q. I'm just going to show you a document Bated 2164-2169.

(Deposition Exhibit No. 5 was marked for identification.)

BY MR. TEMPLE:

Q. This is a memo to Mr. Payne through Clarene Martin, from Treva Saunders, dated February 7, 2008. Subject, response to memorandum dated December 2006 -- 2007, regarding the applicability of the District of Columbia Procurement Practices Act and the applicability of Title 27 DCMR to the Office of the Chief Financial Officer, Office of Contracts. And as you look over it, my question is, have you ever seen this document before?

A. No.

Q. You were aware of a dispute that had arisen between Mr. Tseng and Mr. Payne in the spring of 2008 regarding the awarding of legal service contracts; is that correct?

A. No.

Q. Were you aware that there was an OIO investigation initiated by Mr. Barbera on the behalf of the Office of General Counsel related to this issue?

A. No.

Q. And you're not aware of that as we speak today?

A. No.

Q. This is the first time that you're learning that?

A. Right.

Q. Would it had been appropriate for the Office of the General Counsel or Mr. Barbera from the Office of the General Counsel to file a complaint against Mr. Payne regarding a dispute as to whether OGC or the Office of Contracts should

award legal services contracts?

A. Repeat the question again.

Q. Would it have been appropriate for Mr. Barbera to file a complaint against Mr. Payne in the Office of Integrity and Oversight regarding the question whether OGC or Mr. Payne's office could award a legal services contract?

A. I think so.

Q. Why?

A. Because Mr. Barbera is a seasoned lawyer and he would know the issues involved and he can complain.

Q. Why would that not be a policy question that should have resolved at your level or Ms. Jacobs' level?

A. Apparently they did not deem it to be of a sufficient stature to bring it to my attention. That they could resolve it among themselves.

Q. Were you aware of a memo from Mr. Lundquist suggesting that Mr. Payne actually had the authority?

A. I'm not aware of the memo.

Q. Sir, I want to be clear. You're saying that if, on a policy question, involving contract procurement, there's a dispute between two operations of the offices of the CFO, it should go to the Office of Integrity and Oversight rather than be dealt with by your executive committee?

A. Well, OIO is part of the CFO and, you know, I don't see any problem in OIO investigating that issue.

Q. It's part of the CFO. Is it charged with resolving policy concerns?

A. They would determine what the facts are and would bring -- if they needed to bring it to my attention, they would bring it to my attention.

Q. But they never brought it to your attention on that particular issue?

A. I do not recall that.

Q. And do I take from your answer then that OIO would be better suited to resolve that issue than yourself?

A. Depends upon the level of the issue and they will gather the facts.

Q. Did you understand that this issue germinated from request for proposals for legal services to existing in an area where legal service contracts had already been issued to existing law firms and had expired?

A. I really don't know about that issue.

Q. Did you have any meetings with any law firm representatives to discuss this particular procurement question?

A. No.

Q. Do you recall having a meeting, according to your calendar, with Pauline Schneider?

A. Say that again, please.

Q. Do you recall having a meeting with Pauline Schneider?

A. I had meetings with Pauline Schneider. Again, I do not recall this particular issue being involved.

(Deposition Exhibit No. 6 was marked for

identification.)

BY MR. TEMPLE:

Q. I'm showing you a memo to Ms. Jacobs from Mr. Tseng dated April 15th, 2008, Bated 2156, 2158. And the question is the same, have you seen this document before today?

A. I have not.

Q. And Ms. Jacobs never had any communication with you regarding this particular dispute?

A. I don't recall.

Q. Were you aware of Tseng's modification of the order that you issued?

A. No.

Q. You're aware that if the order was modified, that there are notice requirements under D.C. municipal regulation?

A. The question again, please.

Q. You are aware that if your order was modified, that there are notice requirements under D.C. regulations?

A. I don't know that.

MR. TEMPLE: I'd like to take a ten-minute break.

THE VIDEOGRAPHER: We're off the record at 10:50.

(Brief recess.)

THE VIDEOGRAPHER: We're back on the record at 11:12.

(Deposition Exhibit No. 7 was marked for identification.)

BY MR. TEMPLE:

Q. I'm showing you an exhibit which is dated July 29th, a Report of Investigation transmitted to file from Robert Andary. Take a minute to look over the document, please. Not marked draft, for the record.

A. Is it the same one that I saw before?

Q. One says draft and one does not say draft.

A. I'm sorry?

Q. One says draft and one does not say draft.

A. Okay.

Q. You had a chance to read the draft -- I

mean, the report dated July 29th, 2008, correct?

A. Yes.

Q. You also had an opportunity to compare the two reports, the draft and the nondraft; is that correct?

A. Yes.

Q. Is this the first time you did a comparison of the two?

A. Right.

Q. Do you note that the draft report actually has a transmittal letter and the nondraft report dated the same day does not have a transmittal letter?

A. Except that it was put in the file, rather than transmitted to Angell Jacobs.

Q. And do you note why a draft -- why a final nondraft report was not transmitted to Jacobs?

A. I don't know.

Q. For the record, this nondraft again is 2041, Bates, through 2044, Bates. Who is Cynthia Gross?

A. I'm sorry?

Q. Who was Cynthia Gross?

A. She was an attorney in our office of the General Counsel.

Q. Did you have any communication with her regarding Mr. Graham's lottery contract?

A. No, I did not.

Q. Now, have you spoken to Mr. Graham about this investigation report since your last deposition?

A. Repeat the question again, please.

Q. Have you spoken to Mr. Graham about Mr. Andary's investigative report since your last deposition?

A. Yes.

Q. When did you speak to him?

A. I would say about a week ago.

Q. By phone or in person?

A. By phone.

Q. What was the nature of the communication between you and him?

A. He was concerned that the report was made public.

Q. What was your response to his concern?

A. I said I would not comment on any of these issues. I would let our lawyers talk with him.

Q. Is that the only time you spoke with him?

A. Right.

Q. And do you know if your lawyers spoke with them subsequent thereto?

A. Yes.

Q. And who have you spoken to?

A. David Tseng.

Q. And when would that have taken place?

A. In the course of last week.

Q. And do you know what the purpose of that conversation was?

A. About making this report public -- this record public.

Q. Did you note that a redacted investigative report was released by the government to the press?

A. Yes.
Q. Were you involved in that decision?
A. I'm sorry?
Q. Were you involved in that decision?
A. Only it was as an information.
Q. Why did Mr. Andary leave the OCFO Office?
A. I don't know exact dates, but I would say about three years ago.
Q. And that he was asked to leave?
A. Yes.
Q. What was the reason for that?
A. Basically, he was not enjoying my confidence.
Q. Can you tell me what that means?
A. Well, we periodically review all of our executive deputies and, when they fit the mission of the CFO, we continue with them and, when they do not, we let them go.
Q. He did not fit the mission of the CFO; is that what you're saying?
A. That's right.

Q. Is there a reason why he did not fit the mission of the CFO?

A. Well, I wanted a more aggressive investigation of the CFO operations, a more aggressive oversight of his office and of the CFO operations and wanted a change in leadership there.

Q. He was asked to leave after the conclusion of the Graham investigation?

A. I would think so. I'm not entirely sure about the timing.

Q. Was there something in particular that he wasn't doing that you thought made him not aggressive enough?

A. No.

Q. Your human resources person left, as well, in September or so of 2009 -- in '08, I'm sorry Camille Robinson?

A. Who's that?

Q. Camille Robinson.

A. Right.

Q. And was she also asked to leave?

A. Right.

Q. And why was she asked to leave?

A. Well again, I wanted a more aggressive person of oversight and management.

Q. Aggressive in what respect relative to human resources?

A. That we are in constant need of talented people, more aggressive search for the right people, more speedy decisions in recruiting.

Q. Was she deficient in the area of the resolution of HR concerns?

A. I wouldn't be specific about it except to say that I wanted to change the leadership in personnel function.

Q. Now, have you seen any documentation from the IG's Office regarding an investigation of Michael Teller?

A. No, I have not.

Q. Or the OCFO's IT contracts?

A. No, I have not.

Q. Have you seen communication from OIO or IG regarding Accenture?

A. No, I have not.

Q. You know what Accenture is?

A. Yes, I do.

(Deposition Exhibit No. 8 was marked for identification.)

BY MR. TEMPLE:

Q. I'm showing you Exhibit No. 8, Bate's 2096 through 2098. Memo to file from Andary, June 26, 2008, meeting with Councilmember Jim Graham on Thursday, June 26rd, 2008. You had a chance to review this document carefully?

A. Sir?

Q. Have you had a chance to review the document carefully?

A. Repeat the question again?

Q. You have had the opportunity to review this document carefully?

A. Yes.

Q. And this would be the second time, I

presume, that you have reviewed it carefully?

A. No, I've never seen this before.

Q. You never seen this document until today?

A. Yes, exactly.

Q. So I take from that, you have not been provided a copy of the full Robert Andary OIO Report of Investigation, which contains memorandums of his interviews with the witness and his notes; is that correct?

A. Right.

Q. So today is the first time you're seeing Mr. Andary's notes regarding his meeting with Mr. Graham?

A. Right.

Q. And you note then that Mr. Tseng was present with Mr. Andary when he conducted this investigation?

A. From this memo, I see that.

Q. Is that appropriate?

A. As I said, Mr. Tseng managed our council relations, so any time there is a meeting with a

Councilmember, he and/or his staff would be present.

Q. When Mr. Graham spoke to you on June the 4th or so, did he mention the name Dottie Wade?

A. No. And again, I don't know the specific dates when he talked with me.

Q. You now know based upon Mr. Andary's Report of Investigation that he considered Mr. Graham's complaints, particularly against Mr. Payne, had no merit?

A. I see that in his report.

Q. Having reviewed Mr. Andary's report on Mr. Graham, would it have been appropriate for your office to have referred this matter to the Office of the Inspector General?

A. Repeat the question again.

Q. Having reviewed this particular report, from the Office of Integrity and Oversight, would it have been appropriate for OCFO to have referred this matter to OIG?

A. I was not aware that this matter was

referred to OIG.

Q. Would it have been appropriate for OCFO to have referred this matter to OIG?

A. It depends upon what the concern was.

Q. Have you had an opportunity to review the e-mails that were contained in Mr. Andary's OIO Investigative Report?

A. I have not seen them.

Q. To this date, you have not seen them?

A. No.

Q. And no one in your office has discussed the content of those e-mails with you?

A. No, sir.

Q. If you received a report in an OIO investigation that contained questionable behavior by a city councilmember, would it be appropriate for you to refer that report to OIG?

A. Well, I will depend upon the judgment of Mr. Andary.

Q. Mr. Andary, as you stated earlier, was not independent?

A. Yes, but at the same time, he had experience with, I believe, U.S. Attorney for several years. He was Inspector General of GPO and a lot of experience, preceptorial and legal experience, in the Federal Government.

Q. Would you expect that his judgment would be influenced by Ms. Jacobs' concerns?

A. I don't think so.

Q. So you would expect that he would have independent judgement, based upon his findings, to refer a matter to the OIG?

A. And given his credentials and experience.

Q. And how about is there a position or an official or an entity within the City Council that would review ethical behavior of councilmembers?

A. I don't know.

Q. Would it be appropriate, based upon what you read in this particular report, to refer this matter for some independent ethical inquiry other than in your office?

A. Say that again, please.

Q. Would it be appropriate to refer this matter for an independent ethical inquiry based on what you've read?

A. Well, it's not for me to judge.

Q. Have you read about the Graham-Williams e-mail communications including that of Scott Bolden-Graham communications in the media?

A. I saw that in the media, yes.

Q. Have you attempted to review the actual e-mails?

A. No.

Q. To the extent that they were part of the investigative report prepared by your office, why would you not have attempted to at least look at those e-mails to ascertain what the content of those e-mails were?

MS. EFROS: Objection.

MR. TEMPLE: Noted.

A. I simply relied upon Mr. Andary's judgment.

Q. When you say, you rely on his judgment,

I'm not trying to belabor the point, but what do you mean?

A. Well, here is someone with extraneous experience, preceptorial experience, I believe in the U.S. Attorney's Office and Inspector General of GPO, as well as in other Federal Government assignments, I would depend upon a person of that caliber, that credential, that expertise and experience.

Q. So on one hand you told me earlier that he's not independent, but relative to this determination, you're telling me that he should exercise independent judgement; is that your testimony?

A. Again, the question please?

Q. I said, earlier, I asked you about his level of independence and you told me, definitively, that he was not independent. Now, on this particular question, you're saying he should act independently?

A. No. I wanted him to give independent

advice. So his advice is, basically, the particular employee is exonerated and the matter ends there.

Q. Well, to the extent that you want him to give independent advice, I'm really trying to understand it. He's conducting an investigation in OIO, of an employee, and he ascertains other behavior that is of questionable legality, what should he do?

A. Well, I would ask him what should be done here and, apparently, his advice is that this is not our jurisdiction.

Q. Well, in this particular case, the lottery case is there. It's a controversial contract. There's been a bid protest in the like and there's an investigation of subcontractor that leads to an investigation of Mr. Payne. And in the investigation, there's some questionable behaviors discovered and documented. At that point, should he not brief you and tell you, since it's a contract issue, of what's going on?

MS. EFROS: Objection.

A. All that is in retrospect, all this controversy that had come.

Q. I'm sorry, I don't understand.

A. All this controversy that you referred to, has come since the informed. At that time, judgment and advice that Mr. Andary offers is that this is not our jurisdiction, our employee is exonerated and the matter ends there.

Q. Did he communicate that to anyone in your -- to you and your executive staff in June through August 2008?

A. I don't know. I assume that, I don't know.

Q. Mr. Graham communicated with you as early as April 2008 regarding his lottery concerns and then you met with him in June. Why wasn't there an OIO investigation initiated after Mr. Graham communicated with you as early as April 18, 2008?

A. I'm not sure I met with him, but I did have a conversation with him. It could have been

over the telephone and then, my advice to our senior staff was that matters should be investigated and that's what happened.

Q. Why would it take it to June, a month and a half for this investigation, an OIO investigation, to be triggered?

A. I don't know. It depends upon their workload at the OIO.

Q. Was there any communication at that point in time, August the 18th, that Mr. Tseng should be involved?

A. As I pointed out, any time we have a relationship issue with any of the councilmembers, then I want either Mr. Tseng or one of his lawyers involved in the discussion.

Q. Relative to -- back again to Accenture, do you know whether there was an IBMB report finalized related to Accenture?

A. I don't know. I recused myself from the Accenture contract.

Q. Why would you have recused yourself?

A. Because my son had worked, at one point, as a very junior person in Accenture.

Q. What's the normal course, life course, for an IBMB investigation to be concluded?

A. Repeat the question again.

Q. How long does it take for an IBMB investigation to be concluded?

A. I don't know.

Q. Who is Ramesh Butani?

A. Ramesh Butani is a contractor in the city, an entrepreneur in the city here.

Q. And the name of his company, please?

A. I'm sorry?

Q. The name of his company, please?

A. I don't know. It's something like HGRM or HRGM or something like that?

Q. Do you know the PJ Goel?

A. I know the name.

Q. And what is PJ Goel?

A. I'm sorry?

Q. What is PJ Goel?

A. I believe he is, again, an entrepreneur.

Q. What is the name of his business?

A. I'm sorry?

Q. What is the name of his business?

A. I don't know.

Q. Do either of them still have contracts with OCFO?

A. They may have.

Q. Did there come a time, relative to Goel Construction, they were terminated for default by your office?

A. I don't know that.

Q. Regarding any communication with Mr. Payne regarding a termination of default of PJ Goel?

A. So what's the question?

MS. EFROS: I'm sorry, I didn't hear the question.

MR. TEMPLE: I'm sorry.

BY MR. TEMPLE:

Q. Do you recall having a conversation with Mr. Payne regarding the termination of default --

for default of Mr. Goel?

A. No, I do not.

Q. Or Goel Construction?

A. No, I do not recall that.

Q. Do you recall them being on the excluded parties list?

A. I do not know that.

Q. But you know what the excluded parties list is, though?

A. Repeat the question again.

Q. Do you know what the excluded parties list is?

A. No, I do not know that.

Q. Is it -- it's not the excluded parties list, list of contractors, who are excluded from securing D.C. Government contracts?

A. I don't know that, but I see what you're saying.

Q. Do you recall a contract, a high-profile contract, regarding the scanning and imaging of HR files in the D.C. public schools?

A. Yes.

Q. Do you recall Mr. Payne's involvement with that?

A. No, I do not.

Q. Do you know that he was praised for his contribution to that contract?

A. I do not know that.

Q. Do you recall in -- an EOM contract, Executive Offices of the mayor contract, that occurred sometime in January 2008, in which Mr. Payne took the lead?

A. I do not know that.

Q. Do you know that he was complimented and commended by Dan Tangherlini in January 2008 for his work on that contract?

A. I do not know that.

Q. Are you familiar with the OCFO -- the advertising contracts relative to the D.C. lottery boards.

A. Yes.

Q. Were you aware of any contracting issues

regarding the advertising contracts in or around May 2008?

A. No.

Q. Did you have any communication with Jack Evans in or around 2008 regarding these advertising contracts?

A. I do not recall that.

(Deposition Exhibit No. 9 was marked for identification.)

BY MR. TEMPLE:

Q. I'm showing you a document that contains a series of e-mails dated May 9th through May 14, 2008, notably, page three of four, containing an e-mail from Mr. Jack Evans from J. Coudriet. Do you now recall Mr. Evans having some concern about this issue?

A. I do not recall a call from Mr. Evans on this.

Q. Do you recall any communication from his office on this issue?

A. I do not recall that.

Q. Do you know who Cary Hatch is?
A. Yes, I do.
Q. And who is Cary Hatch?
A. I believe she is an entrepreneur specializing in advertising.
Q. And J. Coudriet?
A. J. Coudriet was Mr. Evans' staff.
Q. Would you have seen these e-mails that are referenced on page three of four, on or around May 9th through the 14th of 2008?
A. I see, if it is part of a trail, yes.
Q. So you would have seen them at that time?
A. Quite likely.
(Deposition Exhibit No. 10 was marked for identification.)
BY MR. TEMPLE:
Q. I'm showing you another exhibit regarding Goel Contracting.
A. Okay.
Q. Have you seen this document before?
A. No. I mean, I have seen this e-mail.

Q. Does it refresh your recollection?

A. Right.

Q. You now understand that that entity had been -- a proposed termination for default had been made by Mr. Payne?

A. From this e-mail, I can see that.

Q. Did you all intervene in stopping that termination?

A. No.

Q. Did you have any communications, at that time, with the contracting entity?

A. No, I did not.

(Deposition Exhibit No. 11 was marked for identification.)

BY MR. TEMPLE:

Q. I'm showing you an exhibit. It's a series of e-mails from Ramesh Butani, Eric Payne dated 2006 going back to 2005. So it's January 2006 to December 2005.

A. Okay.

Q. What's the nature of this communication

from Ramesh?

A. Apparently, he wanted me to intervene.

Q. And did you intervene?

A. No.

Q. And did Ms. Jacobs intervene?

A. I don't think so. I don't know.

Q. Did you have communications with Ms. Jacobs about --

A. No.

Q. Let me finish the question. About Mr. Butani's request?

A. No.

Q. Is Mr. Butani a member of TIDC?

A. I'm sorry?

Q. Is he a member of TIDC?

A. I don't know.

Q. Is Mr. PJ Goel a member of TIDC?

A. I don't know.

Q. Do you know them?

A. I know Mr. Butani.

Q. How do you know him?

A. He's a leader in the Indian community here.

Q. But you don't know PJ Goel?

A. No.

(Deposition Exhibit No. 12 was marked for identification.)

MS. EFROS: Do you want him to read this all?

THE WITNESS: Do you want me to read the whole thing?

MR. TEMPLE: Quickly. Why don't you suspend reading that in the interest of time. I'll suspend that exhibit. What time is it now?

THE COURT REPORTER: 12:04.

MR. PAYNE: 12:00.

(Deposition Exhibit No. 13 was marked for identification.)

BY MR. TEMPLE:

Q. I'm showing you an exhibit that is EWP 010934 and 010935. Directing your attention to Sunday, December 23rd, 2007 e-mail from you, to

Mr. Lundquist, Ms. Jacobs and David Tseng, your question was here, lottery loss hit the paper today. How do I explain to the mayor and the City Council that we did not let them know as soon as we found out, at least earlier than the post, FIO? What is that communication regarding?

A. I don't recall what it is about now.

Q. There was a breach of the lottery contract that occurred prior to December 23rd, 2007?

A. Could be, I am not sure.

Q. You have no recollection of that?

A. No. No, but yeah, no, no recollection.

Q. In the previous e-mail, there's a statement. It says, Nat and I just spoke. I think he's okay now. Who is that referring to? Who is that from?

A. It is from David Tseng.

Q. Do you recall your communication with David Tseng?

A. I do not recall this conversation.

Q. Directing your attention to this

particular exhibit, which is an e-mail dated June 5th, 2008 from Mr. Payne to Mr. Gandhi and it states, priority high. Take a moment to read it, please. You've read it?

A. Yes.

Q. Do you recall receiving a request from Mr. Payne to meet with you regarding his concerns about outstanding OCFO procurement?

A. I see it from the e-mail here.

Q. You don't recall receiving that e-mail?

A. I don't recall.

Q. Do you recall if you ever responded to the e-mail?

A. I don't think I did.

Q. Did you direct Angell or Paul to address the issues that Mr. Payne raised in that particular e-mail?

A. I, basically, trust Paul Lundquist and Angell and their supervision of the Office of Procurement.

Q. Can you repeat that, please? I'm sorry.

A. I trust Paul Lundquist and Jacob, Angell in the supervision of Office of Procurement.

Q. So you would not have any independent communication with Mr. Payne given that trust?

A. Right.

Q. Despite his request?

A. Well, I get requests from many people to see me and I thought Angell and Paul are the right people.

Q. But you don't recall any communication with him about that particular correspondence -- about that particular request from Mr. Payne?

A. No, I do not recall that.

MR. TEMPLE: At this point, we're going to have this marked as an exhibit.

(Deposition Exhibit No. 14 was marked for identification.)

MR. TEMPLE: If you can, please read it? We're going to stop this deposition now, but we're noting that we're not concluding your deposition for the record. Our objection is based on the

fact that there are OIG documents that are outstanding. For the record, on Friday, February 17th, we received an e-mail from Mr. Parsons regarding the availability of exhibits to be picked up after the close of the e-mail was received or sent at 6:38 p.m., noting a set of OIG documents that we have consistently requested. The documents, we were told, were too large to e-mail and they were available for a disk to be picked up. For the record, we weren't able to pick up any disk after closing of business on Friday and this counsel had a funeral on Saturday and was out of town. And Sunday and Monday were not business days, so we have not received these documents nor have we had the opportunity to review the documents given the late hour we received this particular correspondence. I noted as such in a response at 8:30 on Friday night. To the extent, we don't know whether these documents are pertinent necessarily to the information that you know or should know of and we strenuously

object to the non-timely nonproduction of these documents. So we will not close this deposition and I'm sure this matter will be addressed by the Courts.

MS. EFROS: For the record, we consider the deposition closed and Mr. Temple can take up his objections with the Court.

MR. TEMPLE: Very well. Thank you.

THE VIDEOGRAPHER: This is the end of tape one in the videotaped deposition of Dr. Natwar Gandhi. This deposition concludes at 12:13.

(The deposition was concluded at 12:13 p.m.)

CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

Dr. Natwar Gandhi

Dated_____

CERTIFICATE OF NOTARY PUBLIC

I, Kelly Susnowitz, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears herein was duly sworn by me; that the testimony of said witness was taken by me in shorthand and this transcript typed under my direction; that said transcript is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel retained by the parties hereto, nor financially or otherwise interested in the outcome of the action.

Notary Public in and for the

District of Columbia

My commission expires:

June 13, 2012

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